



In the United States Patent and Trademark Office

Applicants: David G. Midkiff et al. Docket No.: 15780
Serial No.: 09/944,435 Group: 1771
Confirmation No: 1854 Examiner: Christopher C. Pratt
Filed: August 31, 2001 Date: August 25, 2003
For: RIGIDIFIED NONWOVEN AND METHOD OF PRODUCING SAME

Response to Restriction Requirement With Traverse

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the restriction requirement mailed July 25, 2003, Applicants respectfully **provisionally elect** the Group II claims to be prosecuted by way of the present application. That is, Applicants elect claims 19-27 for prosecution in the present application.

This election is made **with traverse**. Applicants specifically reserve the right to seek patent protection for non-elected subject matter by divisional application.

Applicants respectfully submit that the Examiner's restriction requirement is in error because the inventions of Group I and Group II are not related as intermediate-final product and are so closely related that a full and proper consideration of the invention of Group II must include a search for the composite material of Group I, claims 1-18. Further, claim 18 of Group I includes a filter media.

In order for an intermediate and final product relationship to be present, typically, the intermediate must lose its identity in the final product (MPEP 806.04(b)). As set forth in MPEP 806.04(f) in order for species to be mutually exclusive the general test is that one claim recites limitations which are related to the first species but not the second, while a second claim recites limitation disclosed only for the second species and not in the first. This is clearly not the case here. All of the limitation of the first species (the nonwoven composite) are present in the second species (the filter material). Hence, there is not a mutually exclusive relationship present. This is not an admission that if a reference teaching all of the limitations of Group I anticipates Group II or renders Group II obvious. However, a reference which anticipates Group II would also anticipate Group I, provided that all of the same claim limitations defining the composite in Group II are present the Group I claims.

Therefore, the Examiner's basis for making the restriction requirement is improper, since Group I and Group II are not mutually exclusive species in an intermediate final product relationship, for the reasons set forth above. Applicants hereby request that the Examiner examine claims 1-27 together.

With respect to claims 28-38, Applicants reserve the right to request that these claims be rejoined with claims 1-27, upon finding allowable subject matter in claims 1-27, in accordance with MPEP 821.04.

The undersigned may be reached at: 770-587-7204.

Respectfully submitted,

MIDKIFF ET AL.

By:



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CERTIFICATE OF FACSIMILE

I, Rosemarie Enright, hereby certify that on August 25, 2003 this document is being transmitted via facsimile (703-872-9310) addressed to Examiner Christopher Pratt, Art Unit 1771.

By:



Rosemarie Enright